



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22VAC40-72
<b>Regulation title</b>	Standards for Licensed Assisted Living Facilities
<b>Document preparation date</b>	February 16, 2011

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

The following sections of the Code of Virginia are the sources of legal authority for the regulation: § 63.2-217 states that State Board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2; § 63.2-1732 addresses the State Board's overall authority to adopt regulations for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1802 authorizes assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments due to dementia if they comply with the Board's regulations; § 63.2-1803 addresses staffing of assisted living facilities; § 63.2-1805 relates to admission, retention, and discharge of residents; and § 63.2-1808 specifies resident rights.

The promulgating entity is the State Board of Social Services.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

There is no viable alternative for achieving the purpose of the existing regulation, which is promulgated to protect the health, safety, welfare and individual rights of residents of assisted living facilities. The Code of Virginia mandates that regulations for assisted living facilities be promulgated.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
County Commission on Long-Term Care Residences, Family Members	<p>Assisted living facilities (ALFs) need more regulation, not less. Regulation must be strong enough to address needs of ill and frail residents, as well as dementia residents. Regulation needs to be reflective of the increased vulnerability of residents. More training is needed for dementia care, with specific training requirements, including dental hygiene, personal hygiene, handling depression and anxiety due to dementia and medication, assessment of behavior, and toileting issues (dementia and other residents too). There is a need for better recognition and training for thirst. In addition, better guidelines for prevention of falls and how to treat residents after falls are needed, as well as allow silent alarms. Language should be added to increase supervision or required periodic observation of medication aides, recommendation that there be cameras at medication stations to ensure medication aides are performing their job correctly. There is a need to address the +/- 1 hour window for distributing medication in that it is too wide a window. A requirement should be added that a trained staff person periodically check on residents attending a volunteer-run group activity. A waiver by a resident, family member, or legal representative should be permitted</p>	Will consider comments when the regulation is revised.

	<p>allowing one-on-one contact with a volunteer without staff supervision. Recommendation made that all facilities should do hourly checks on residents who can't or won't use the call system. There should be a requirement that new ALFs and existing ALFs that replace signaling systems install technology that includes silent alarms or some other passive signaling system to alert staff when a resident with dementia needs assistance. The disclosure statement should be given to individuals as part of the ALF's marketing materials rather than five days before a resident moves in. The disclosure statement should include information about dementia care and services, listing of specific conditions for which a resident can be discharged, and available life safety features. When statements are updated to include changed or additional information, there should be a requirement to provide them to current residents, family members, or legal representatives. Wording should be clear that AFLs must make efforts to involve family members or legal representatives when the individualized service plan is developed or reviewed.</p>	
<p>Licensee</p>	<p>Comments that were made related to the auxiliary grant rate and regulation.</p>	<p>Will refer comments to division responsible for the Auxiliary Grant Program.</p>
<p>Licensee</p>	<p>We are striving to stay afloat, and unable to profit because of the limit of what Auxiliary Grant homes can charge a resident and regulations set by the state that overstep scope of purpose and incur a hardship on small residential care facilities that accept the underprivileged and disenfranchised. We ask that our identity be given back in that we provide care for the poor, the disabled, and the infirm and only provide room and board and maintenance and care. We are residential in nature and not assisted living facilities. The regulations for us should fit the</p>	<p>Will consider comments when the regulation is revised and refer comments related to the Auxiliary Grant Program to division responsible for that program.</p>

Licensee	<p>range and scope of what we are intended to be and we should not be held to assisted living facility regulations.</p> <p>Comments that were made related to the auxiliary grant regulation.</p>	<p>Will refer comments to division responsible for the Auxiliary Grant Program.</p>
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An informal advisory group was not formed to assist in the periodic review.

**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

The regulation meets the criteria set out in Executive Order 14 in that it facilitates the efficient and effective operation of state government by establishing minimum requirements for operating an assisted living facility, and enabling residents, relatives and legal representatives, licensing inspectors, and other citizens of the Commonwealth to be knowledgeable of these requirements. The regulation, which is clearly written and easily understandable, is necessary for the protection of public health, safety, and welfare.

**Result**

*Please state that the agency is recommending that the regulation should stay in effect without change.*

The agency is recommending that the regulation stay in effect without change. There are six regulatory advisory panels that are currently meeting to review the assisted living facility regulation and to make recommendations for revisions. The agency anticipates submitting a NOIRA in the fall of 2011, which would allow time for the panels to complete their work and the Assisted Living Facility Advisory Committee to provide feedback on suggested changes.

**Small business impact**

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

The regulation continues to be needed to protect the health, safety and welfare of residents of assisted living facilities. The regulation covers several areas, such as administration; personnel; staffing and supervision; admission, retention, and discharge of residents; resident care; resident accommodations; buildings and grounds; and emergency preparedness. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation, but rather coordinates with other laws and regulations as necessary. The last comprehensive revision of the regulation was in 1996, with four limited amendments since then. The regulation attempts to keep up with developments and changes in technology, economic conditions, and the resident population. The agency has determined that the regulation should not be amended at this time, but rather at a later date. Please see comments under the heading immediately above entitled Result.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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The regulation has a positive impact on families and family stability in that families are more confident that their loved ones who are residents of assisted living facilities are receiving the care they need and deserve. Moreover, there could be a positive economic impact on facilities by averting residents' preventable accidents, illnesses, and deterioration of functioning.